

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.08.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.20875 of 2013
and M.P.No.2 of 2013

K.Saravanan

..

Petitioner

Vs

1. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd, (TASMAC),
Chennai-600 008
2. The Senior Regional Manager,
TASMAC Regional Office,
Salem-636 016
3. The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Vellore-632 001

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the third respondent passed in his proceedings Se.Mu.Na.Ka.A2/352/CV/ 2011 dated 14.09.2011 as confirmed by the order of the second respondent in Se.Mu.No.1042/2011/E, dated 30.01.2012 as confirmed by the order of the first respondent in his proceedings Na.Ka.No.4566/R1/2013 dated 19.06.2013 and to quash the same and directing the respondents to reinstate the petitioner in service with continuity of service, back wages and other attendant benefits within a time limit as fixed by this Court.

For Petitioner : Mr.S.Sathiamurthi

For Respondents : Mr.P.Arumugarajan,
Standing Counsel

ORDER

The writ petition has been filed by the petitioner under Article 226 of constitution of India to challenge the order of his termination in a disciplinary proceedings by the 3rd respondent/Corporation to be illegal, arbitrary and contrary to law. The petitioner prays for quashment of the same and direct reinstatement of him into service with back wages and other attendant benefits.

2 It appears that the petitioner was appointed as a Salesman in Tamil Nadu State Marketing Corporation Limited (TASMAC) under the 3rd respondent and he was posted as a Salesman in Retail Vending shop No.11074. The said shop was inspected by the second respondent and during the course of such inspection as allegedly noticed a defect i.e the petitioner was found to be selling less alcohol content bottle, a report was submitted. Hence, the petitioner was placed under suspension and a departmental enquiry was conducted against him for selling less alcohol content bottles. The petitioner along with his supervisor in the said shop were proceeded with Disciplinary proceedings on the allegation of selling brandy with less alcohol content by meddling with the brandy bottle supplied by the respondent and as such brought dis-reputation to the respondents. The petitioner in the aforesaid disciplinary proceedings participated to repel the charge against him to be of any substance. But admittedly on conclusion of the disciplinary proceeding, taking into consideration the report of the enquiry officer as well as the explanation of the petitioner, the Disciplinary authority accepted the report of the enquiry officer recording the charges to have been proved, imposed a penalty of removal. Assailing the same, the petitioner preferred an appeal as well as the Revision but unsuccessful. Therefore, the petitioner came forward to file this writ petition, challenging the said order of removal inter alia on the ground that the same being perverse and as such, liable to be quashed.

3 During the course of hearing on admission, it is being submitted by the learned counsel appearing for the petitioner the petitioner does not dispute the finding of misconduct to have been proved against him and only prays this Court should direct the respondent to revisit the punishment of removal by any other punishment, by giving appropriate direction to the respondent, inasmuch as the punishment of removal in the facts and situations and considering the nature of delinquency appears to be shockingly disproportionate, more so, when the same has been passed without taking into consideration the mitigating circumstances that the petitioner is a poor salesman, working under the supervisor when the aforesaid misconduct said to have been committed by him along with the supervisor and his family are dependants on him.

4. The learned counsel appearing for the petitioner also submits that in the event of disciplinary authority revisiting the aforesaid punishment by any other punishment, the petitioner shall also not claim any back wages for the aforesaid period. Furthermore, it is also submitted that this Court in similar circumstances

in umpteen number of writ petitions have also directed reinstatement by revisiting the punishment / penalty by any other punishment.

5. Mr.P.Arumugarajan, the learned counsel who accepts notice for respondents/TASMAC does not dispute the fact that in similar facts and situations, this Court in umpteen number of writ petitions have directed to the disciplinary authority to revisit the punishment and reinstate the delinquent salesman into service but without any back wages and hence necessary orders be passed as this Court may deem fit and proper.

6. After hearing the learned counsel appearing for the parties and going through the materials on record, especially the submissions made that in similar cases, this Court has directed the Disciplinary Authority to reconsider the punishment / penalty imposed, this writ petition stands disposed of at the stage of admission with a direction to the disciplinary authority to revisit / reconsider the punishment of removal imposed by any other suitable punishment as it may deem fit and proper in the facts and situations within a period of six weeks from the date of receipt of copy of this order. However, it is made clear that in the event of substitution of punishment by any other punishment, the petitioner shall not be entitled to any back wages for the period during which he remains out of duty.

7. With the aforesaid order, this writ petition stands disposed of. However there shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

lok Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd, (TASMAC),
Chennai-600 008

2. The Senior Regional Manager,
TASMAC Regional Office, Salem-636 016

3. The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC), Vellore-632 001

+1cc to Mr.M.RAJENDHIRAN , Advocate SR.No. 55511

W.P.No.20875 of 2013

ASK(12/09/2018)